



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M- CORP.

DATE: MAY 16, 2019

APPEAL OF ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software, services, and internet technologies business, seeks to employ the Beneficiary as a program manager. It requests classification of the Beneficiary as an advanced degree professional under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director found that the Beneficiary does not meet the minimum educational requirement for the job under the terms of the labor certification because he does not have a degree in the requisite field of study.

On appeal the Petitioner asserts that the Director’s analysis was faulty, and that the Beneficiary’s degree does meet the field of study requirement of the labor certification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national applies for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition seeking advanced degree professional classification for a beneficiary “must be accompanied by: (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign

equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.”

A beneficiary must also meet all of the education, training, experience, and other requirements of the labor certification as of the petition’s priority date.¹ See *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

II. ANALYSIS

The record includes copies of a degree certificate and academic transcript from the University of [REDACTED] showing that the Beneficiary earned a master of business administration (MBA) from that institution on [REDACTED] 2013, which qualifies as an advanced degree under 8 C.F.R. § 204.5(k)(3)(i). At issue on appeal is whether this degree is in the requisite field of study to satisfy the minimum educational requirement of the labor certification. For the reasons discussed in this decision, we conclude that it does not.

In order to determine what a job opportunity requires, we must examine “the language of the labor certification job requirements.” *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the certified job offer exactly as it is completed by the prospective employer. See *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job’s requirements must involve reading and applying the plain language of the labor certification application form. *Id.* at 834.

Section H of the labor certification sets forth the minimum education, training, experience, and other requirements to qualify for the proffered position. In this case section H states that the minimum level of education required for the job of program manager is a master’s degree in computer science, engineering, mathematics, information systems, physics or a related field (boxes 4, 4-B, and 7-A), or a “foreign educational equivalent” (box 9). Section H also states (in box 7) that an alternate field of study is not acceptable.

The Director found that the Beneficiary’s MBA was not in one of the required fields of study identified in the labor certification, notwithstanding the fact that some of his coursework was in those fields. Accordingly, the Beneficiary did not meet the minimum educational requirement of the labor certification to qualify for the job offered.

On appeal the Petitioner contends that the Director erred in finding the Beneficiary’s degree did not satisfy the field of study requirement because the title of a degree is less important than the body of knowledge imparted in its coursework. According to the Petitioner, the Beneficiary’s MBA focused on information systems, strategy, and marketing, which is an acceptable related field for the program manager position under the terms of the labor certification. As evidence of the alleged degree focus the Petitioner cites a previously submitted letter from [REDACTED], an associate dean at the

¹ The “priority date” of a petition is the date the underlying labor certification is filed with the DOL. See 8 C.F.R. § 204.5(d). In this case the priority date is March 8, 2018.

University of [REDACTED]’s graduate school of business and one of the Beneficiary’s professors. [REDACTED] [REDACTED] refers to the Beneficiary’s enrollment “in our Master’s level Business Administration program with a focus on Information Systems, Strategy and Marketing areas,” and identifies nine specific courses which assertedly taught the Beneficiary about project management, managing software or business processes for operations, systems, projects, tools or policies, and SDLC. The specific courses named by [REDACTED] include information systems; project management; product development and management; technology innovation, adoption and diffusion; commercialization and innovation strategy; decision techniques in manufacturing and operations management; forecasting; decision making in complex environment; and statistical analysis. The Petitioner claims that this coursework makes the Beneficiary’s MBA a degree in a related field within the contemplation of boxes H.4-B and H.7-A of the labor certification, and accords with specific job duties as described in the labor certification.

While some of the Beneficiary’s MBA coursework did focus on information systems, marketing, and strategy, as reflected in individual course titles, the record does not support the Petitioner’s assertion that the MBA as a whole focused on those three subject areas. According to publicly available information, the MBA program at the University of [REDACTED] offers six different areas of concentration, three of which are information systems (and technology management), marketing, and strategy.² [https://www\[REDACTED\].edu/academics/mba/two-year-mba](https://www[REDACTED].edu/academics/mba/two-year-mba) (last visited April 24, 2019). Since information systems, marketing, and strategy are all separate concentrations, it is unclear how the Beneficiary could have been awarded an MBA degree focusing on all three. Neither the degree certificate nor the academic transcript states that the Beneficiary’s MBA included a specific focus or major field of study within the broad realm of business administration. Of the nine courses identified by [REDACTED] only one – entitled information systems – was in a field of study expressly identified as acceptable in the labor certification. The other eight courses appear to focus as much or more on marketing and strategy, fields of study that are not clearly related to information systems, or computer science, or engineering, or mathematics, or physics. Even if we granted the benefit of the doubt to the Petitioner and concluded that the other eight courses identified by [REDACTED] [REDACTED] are in fields of study related to one or more of the fields of study identified as acceptable in the labor certification, the nine courses overall represent only 30% of the Beneficiary’s total course load, which was 30 courses.

For the reasons discussed above, we conclude that the Beneficiary’s MBA from the University of [REDACTED] is not in a field of study related to computer science, or engineering, or information systems, or mathematics, or physics, as required by the labor certification. Therefore, the degree does not meet the minimum educational requirement of the labor certification to qualify the Beneficiary for the job of program manager.

² The three other areas of concentration are finance, operations, and organizational behavior and human resources management.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M- Corp.*, ID# 3863185 (AAO May 16, 2019)